IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No. 653/2007

Judgment delivered on: November 02,2007

The Commissioner of Police &Ors.
Police Headquarters
I.P.Estate,
New Delhi ..... Appellants

Through: Mr. Amitabh Marwah, Advocate

versus

Smt. Krishna Devi & Ors. ..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

By way of this appeal, the appellants seek to challenge the impugned award merely on the ground that there was no negligence on the part of the driver of the appellant no.1. The award is also assailed on yet another ground that the claim petition filed by the respondents/claimants was debarred under Section 140 of The Delhi Police Act.

Mr. Amitabh Marwah, counsel for the appellants contends that findings of the tribunal on the aspect of negligence are incorrect and perverse. The contention of the counsel for the appellants is that the driver of the offending vehicle was coming from the narrow lane to the main road so as to cross the same and took the right turn and at that point of time the deceased who was driving his two wheeler scooter in a rash and negligent manner collided with the vehicle of the appellant no.1 and therefore, the sole negligence was of the deceased and not of the driver of the appellant no.1. The counsel also contends that the deceased was not wearing helmet and besides that he was carrying cattle feed on the back of his scooter due to which

the vehicle being driven by the deceased tilted and hit the vehicle of appellant no.1.

I have heard counsel for the appellant at considerable length.

I do not find force in the argument of counsel for the appellant. Perusal of the impugned award shows that the Tribunal has discussed this aspect of negligence not only in detail but quite satisfactorily. The Tribunal has observed that when the vehicle was coming from a narrow road and is approaching towards the wide road it is the duty of the driver coming from the narrow road to stop the vehicle and see the clarity on the main road before making an attempt to cross the road. The Tribunal has placed reliance on the site plan which also suggested that the scooter being driven by the deceased was coming from its correct left side when the same was hit by the driver of the offending vehicle. The Tribunal has also taken note of the fact that the said driver is facing criminal prosecution against whom charge sheet has already been filed under Section

173 of the Cr.P.C. After having gone through the evidence led by the parties and the documents placed on record, the Tribunal found that the negligence on the part of the driver of the offending vehicle was duly established. The Tribunal further held that in the facts and circumstances of the case, Rule of Res Ipsa Loquitur was fully applicable. The Tribunal further held that it is a settled principal of law that in motor accidents claim cases, the negligence of the driver of the offending vehicle has not to be establish beyond all reasonable and probable doubts as required to be done in the criminal proceedings.

The principle of Res Ipsa Loquitur has been explained in the judgment of Hon'ble Apex Court in **Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd.**, reported in **(1977) 2 SCC 745.** The relevant paragraph is reproduced below:

> **6.** The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused

it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur.* The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself' or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the *Law of Torts* (15th Edn.) at p. 306 states: "The maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In *Halsbury's Laws of England* , 3rd Edn., Vol. 28, at p. 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged a; negligence 'tells it own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care.

Based on the said discussion, I do not find there is any infirmity in the order passed by the Tribunal holding the driver of the appellant vehicle negligent for the accident in question which resulted into the death of Shri Pawan Saini.

The second contention of the appellant that the application filed by the respondents/claimants was barred under Section 140 of the Delhi Police Act, I do not find any force in the submission of counsel for the appellant. It is a settled legal proposition that claim application filed under the Motor Vehicles Act are not akin to civil suits and therefore, the plea of invoking Section 140 of The Delhi Police Act is not available to the appellants so far as the compensation cases under Motor Vehicles Act are concerned. Section 140 of The Delhi Police Act is itself a bar on entertaining any suit or prosecution if the same is not instituted within a period of three months after the date of the act complained of. Proviso to Section 140 (1), restricts the maximum period for filing the suit or prosecution within a period of one year from the date of the alleged offence, provided the same is instituted with

the previous sanction of the Administrator.

A similar situation came before the Bombay High Court in **Parbat Gopal Walekar Vs. Dinkar S. Shinde** reported in *1961 (63) Bom LR 189,* under the provisions of Bombay Police Act (analogous to Section 140 of the Delhi Police Act, 1978), wherein a police constable driver, when driving a police jeep, which was carrying a S.I. of police who was proceeding for an inquiry, knocked down a person and injured him and a suit for damages was filed against the driver, where also defence of non-maintainability was taken on the basis of the plea that it was filed beyond the period prescribed under Section 161 of the Bombay Police Act, 1951, on the question of entitlement to the benefit of the period of limitation prescribed under Section 161 of the Act; the Court observed as follows:

> "the act of the petitioner in driving rashly and negligently, being in total disregard of the manner in which he was expected to do his duty under the Bombay Police Manual, 1950, could not be regarded as an act done under the colour or in excess of duty imposed upon him as a police constable driver and, therefore, he was not entitled to the benefit of the period of limitation prescribed under Section 161 of

the Act."

In the instant case as well, the act of driving of the vehicle in a rash and negligent manner by the appellant driver undoubtedly cannot be regarded as an act done under the colour of duty or authority or in excess of any such duty, or authority, as a prerequisite for the operation of Section 140 of the Delhi Police Act.

In the instant case, the act of the appellant driver is also in disregard of the duty that he owed as the driver of the motor vehicle to the public to drive the vehicle with due care and attention. In my view, therefore, the benefit of the shorter period of limitation under Section 140 of the Delhi Police Act would not be available to the appellant.

There can be no doubt that there is no such bar of limitation as far as filing of compensation case is concerned under the Motor Vehicles Act. Even otherwise the appellants have not taken any such defence in their written statement and it is for the first time in the appeal this objection has been taken.

In the light of the above discussion, I do not find any merit in the present appeal.

Dismissed.

November 02, 2007 **KAILASH GAMBHIR**
mg **(JUDGE)**